

SOUTHERN ENVIRONMENTAL LAW CENTER

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July 17, 2018

Via U.S. Mail and FOIAonline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

U.S. Environmental Protection Agency
Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street, S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

**Re: FOIA – Plantation Pipeline Spill Site in Anderson County, South Carolina
South Carolina Department of Health and Environmental Control Site # 18693**

To Whom It May Concern:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Southern Environmental Law Center (“SELC”) submits this request on behalf of Upstate Forever and the Savannah Riverkeeper to the United States Environmental Protection Agency (“EPA”) for public records.

We ask that the EPA produce all public records in its possession related to or concerning the Plantation Pipeline spill in Anderson County near the intersection of West Calhoun Road and Lewis Drive (confirmed in December 2014). Related records include:

- (1) Records that address impacts of the spill on surrounding creeks, wetlands, groundwater, soil, flora, and fauna;
- (2) Records regarding the remedial efforts overseen by South Carolina Department of Health and Environmental Control (“DHEC”) and conducted by Plantation Pipe Line Co., Kinder Morgan, other responsible parties, and their consultants, including ch2m;
- (3) Records regarding any litigation related to the site, including the case brought by Upstate Forever and the Savannah Riverkeeper—*Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, U.S. District Court for the District of South Carolina Case Number 8:16–4003–HMH, U.S. Court of Appeals for the Fourth Circuit Case Number 17-1640.
- (4) Any internal EPA communications or communications with external parties about the spill, ongoing remediation efforts, and related litigation.

We ask that the EPA produce all records from January 1, 2017 to the date of the agency's search pursuant to this request.

For the purposes of this request, the term "public records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of the EPA. This request includes, but is not limited to:

- Notes (whether handwritten or typewritten) from internal EPA meetings, meetings with DHEC, and other interagency meetings;
- Notes (whether handwritten or typewritten) from meetings with elected officials, with members of the public, with trade and/or nonprofit organizations, with Plantation Pipe Line, Kinder Morgan, ch2m, and other businesses and their representatives or consultants;
- Electronic mail messages (whether sent, received, deleted, etc., including attachments) and other correspondence and documents exchanged between:
 - EPA employees;
 - EPA and DHEC and between EPA and other state or federal departments and agencies;
 - EPA and Plantation Pipe Line, Kinder Morgan, ch2m, and other businesses and their representatives or consultants;
 - EPA and members of the public, or trade or nonprofit organizations;
 - EPA and elected officials;
- Telephone logs;
- Notes; and
- Other records of communications.

Finally, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, or bears annotations.

In addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents including the date of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed exemption or privilege from disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and produce the document in redacted form. The redacted information should be included in the list just described.

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. The public interest standard of the

fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Ettinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers . . .” *Pederson*, 847 F. Supp. at 855.

This waiver request meets the criteria set forth in 40 C.F.R. § 2.107(*I*). SELC, Upstate Forever, and the Savannah intend to use the information obtained through this request to inform the general public about the EPA’s role in petroleum pipeline spill prevention and control. This spill is of substantial public importance and has been the subject of multiple news reports and public meetings. The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of EPA’s activities. This will provide significant new information regarding government operations that is not otherwise available, as the request covers otherwise unavailable communications and other internal agency documents. SELC is a 501(c)(3) non-profit organization with over 25 years of experience disseminating public information regarding environmental and EPA-related issues. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Lawyers at SELC are regularly interviewed by the media to explain their work and its significance and intend to communicate directly with the media regarding the EPA’s role in preventing petroleum pipeline spills and interpreting the Clean Water Act. SELC also plans to use press releases, social media, and public comment letters to disseminate information gathered from the FOIA request, and intends to publicly distribute this information via its quarterly print newsletter delivered to 16,000 people and its monthly electronic newsletter that reaches approximately 11,000 people. SELC, Upstate Forever, and the Savannah Riverkeeper also intend to disseminate the information gathered through this request to the general public through their respective organizational websites. SELC’s website, <https://southernenvironment.org>, contains documents generated by SELC for the specific purpose of educating the public on particular issues. The SELC website has an average monthly traffic of approximately 15,000 unique visitors. SELC, Upstate Forever, and the Savannah Riverkeeper have previously disseminated public information regarding this project via their respective websites. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast and will actively seek opportunities to educate the public about this spill.

A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester. Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we ask that you contact us prior to fulfilling the request should the fees exceed \$100.

FOIA directs a responding agency to make a “determination” on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Because of the time-sensitive nature of our request, we specifically request that you comply with the statutory deadline. Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. *Id.*

We are willing to work with your agency to minimize the work necessary to respond. We are willing to discuss ways to facilitate your response to our FOIA request. Please do not hesitate to contact us at 843-720-5270 or ejones@selcsc.org or cdescherer@selcsc.org with any questions or to arrange for inspection, copying, or electronic transmission of the requested public records. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to be "Elizabeth Jones" followed by a stylized flourish.

Elizabeth Jones, Associate Attorney
Chris DeScherer, Managing Attorney,
463 King Street, Suite B
Charleston, SC 29403-7204